

Subpart E [Reserved]

Subpart F—Exemption of Qualifying Small Power Production Facilities and Cogeneration Facilities from Certain Federal and State Laws and Regulations

§ 292.601 Exemption to qualifying facilities from the Federal Power Act.

(a) *Applicability.* This section applies to qualifying facilities, other than those described in paragraph (b) of this section.

(b) *Exclusion.* This section does not apply to a qualifying small power production facility with a power production capacity which exceeds 30 megawatts, if such facility uses any primary energy source other than geothermal resources.

(c) *General rule.* Any qualifying facility described in paragraph (a) of this section shall be exempt from all sections of the Federal Power Act, except:

(1) Sections 205 and 206; however, sales of energy or capacity made by qualifying facilities 20 MW or smaller, or made pursuant to a contract executed on or before March 17, 2006 or made pursuant to a state regulatory authority's implementation of section 210 the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a-1, shall be exempt from scrutiny under sections 205 and 206;

(2) Section 1-18, and 21-30;

(3) Sections 202(c), 210, 211, 212, 213, 214, 215, 220, 221 and 222;

(4) Sections 305(c); and

(5) Any necessary enforcement provision of part III of the Federal Power Act (including but not limited to sections 306, 307, 308, 309, 314, 315, 316 and 316A) with regard to the sections listed

in paragraphs (c)(1), (2), (3) and (4) of this section.

(Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (1980) Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601, *et seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.*, Federal Power Act, as amended, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; E.O. 12009, 42 FR 46267)

[Order 135, 46 FR 19232, Mar. 30, 1981, as amended by Order 569, 59 FR 40470, Aug. 9, 1994; Order 671, 71 FR 7868, Feb. 15, 2006; 72 FR 29063, May 24, 2007]

EFFECTIVE DATE NOTE: At 75 FR 15966, Mar. 30, 2010, § 292.601 was amended by revising paragraph (a), effective June 1, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 292.601 Exemption to qualifying facilities from the Federal Power Act.

(a) *Applicability.* This section applies to qualifying facilities, other than those described in paragraph (b) of this section. This section also applies to qualifying facilities that meet the criteria of section 3(17)(E) of the Federal Power Act (16 U.S.C. 796(17)(E)), notwithstanding paragraph (b).

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§ 292.602 Exemption to qualifying facilities from the Public Utility Holding Company Act and certain State law and regulation.

(a) *Applicability.* This section applies to any qualifying facility described in § 292.601(a), and to any qualifying small power production facility with a power production capacity over 30 megawatts if such facility produces electric energy solely by the use of biomass as a primary energy source.

(b) *Exemption from the Public Utility Holding Company Act of 2005.* A qualifying facility described in paragraph (a) of this section or a utility geothermal small power production facility shall be exempt from the Public Utility Holding Company Act of 2005, 42 U.S.C. 16,451-63.

(c) *Exemption from certain State laws and regulations.* (1) Any qualifying facility shall be exempted (except as provided in paragraph (b)(2)) of this section from State laws or regulations respecting:

- (i) The rates of electric utilities; and
- (ii) The financial and organizational regulation of electric utilities.

(2) A qualifying facility may not be exempted from State laws and regulations implementing subpart C.

(3) Upon request of a state regulatory authority or nonregulated electric utility, the Commission may consider a limitation on the exemptions specified in paragraph (b)(1) of this section.

(4) Upon request of any person, the Commission may determine whether a qualifying facility is exempt from a particular State law or regulation.

(Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (1980) Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601, *et seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.*, Federal Power Act, as amended, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; E.O. 12009, 42 FR 46267)

[45 FR 12237, Feb. 25, 1980, as amended by Order 135, 46 FR 19232, Mar. 30, 1981; Order 671, 71 FR 7869, Feb. 15, 2006; Order 671–A, 71 FR 30589, May 30, 2006]

EFFECTIVE DATE NOTE: At 75 FR 15966, Mar. 30, 2010, § 292.602 was amended by revising the section heading and paragraph (c)(1), effective June 1, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 292.602 Exemption to qualifying facilities from the Public Utility Holding Company Act of 2005 and certain State laws and regulations.

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(c) *Exemption from certain State laws and regulations.* (1) Any qualifying facility described in paragraph (a) of this section shall be exempted (except as provided in paragraph (c)(2) of this section) from State laws or regulations respecting:

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PART 294—PROCEDURES FOR SHORTAGES OF ELECTRIC ENERGY AND CAPACITY UNDER SECTION 206 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

AUTHORITY: 5 U.S.C. 553; 16 U.S.C. 791a–825r; 42 U.S.C. 7107–7352.

§ 294.101 Shortages of electric energy and capacity.

(a) *Definition of shortages of electric energy and capacity.* For purposes of

this section, the term *anticipated shortages of electric or energy* means:

(1) Any situation anticipated to occur in which the generating and bulk purchased power capability of a public utility will not be sufficient to meet its anticipated demand plus appropriate reserve margins and this shortage would affect the utility's capability adequately to supply electric services to its firm power wholesale customers; or

(2) Any situation anticipated to occur in which the energy supply capability of a public utility is not sufficient to meet its customers' energy requirements and this shortage would affect the utility's capability adequately to supply electric services to its firm power wholesale customers.

(b) *Accommodation of shortages.* (1) Each public utility now serving firm power wholesale customers, shall submit a brief statement indicating how it would accommodate any shortages of electric energy or capacity affecting its firm power wholesale customers.

(2) This statement shall:

(i) Describe how the utility would assure that direct and indirect customers are treated without undue prejudice or disadvantage; and

(ii) It shall also identify any agreement, law, or regulation which might impair the utility's ability to accommodate such a shortage.

(3) Each utility shall file a copy of its statement with any appropriate State regulatory agency and all firm power wholesale customers.

(4) If a plan for accommodating any shortages of electric energy or capacity affecting its firm power wholesale customers as described in the brief statement submitted pursuant to paragraph (b)(1) of this section is modified, the utility must submit to the Commission and the persons described in paragraph (b)(3) of this section within 15 days of any such modification, a supplemental statement informing the Commission of those modifications.

(5) Notwithstanding any other provision of this section, a public utility need not file the statement with the Commission if the public utility provides in its rate schedules to firm power wholesale customers that: